Department of Labor and Related Entities

January 2000

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January 18, 2000

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Senate Committee on Government Operations
The Honorable Mike Kernell, Chair
House Committee on Government Operations
and
Members of the General Assembly
State Capitol
Nashville, Tennessee 37243

Ladies and Gentlemen:

Transmitted herewith is the performance audit of the Department of Labor and Related Entities. This audit was conducted pursuant to the requirements of Section 4-29-111, *Tennessee Code Annotated*, the Tennessee Governmental Entity Review Law.

This report is intended to aid the Joint Government Operations Committee in its review to determine whether the department and its related entities should be continued, restructured, or terminated.

Sincerely,

John G. Morgan
Comptroller of the Treasury

JGM/dlj
99-046

State of Tennessee

Audit Highlights

Comptroller of the Treasury — Division of State Audit

Performance Audit

Department of Labor and Related Entities

January 2000

AUDIT OBJECTIVES

The objectives of the audit were to review the department's and the entities' legislative mandates and the extent to which they have carried out those mandates efficiently and effectively, and to make recommendations that might result in more efficient and effective operation of the department and the related entities.

FINDINGS

The Department Cannot Fully Enforce Workers' Compensation Laws*

Sections 50-6-102 and 50-6-405, *Tennessee Code Annotated*, require that all employers with five or more employees carry workers' compensation insurance. However, the department does not have an effective system in place to identify all employers with five or more employees and, therefore, cannot ensure that all those employers have workers' compensation insurance and that employees will be compensated in the event of a job-related injury (page 16).

The Department Is Not Sending Delinquent Tennessee Occupational Safety and Health Administration (TOSHA) Citation Cases to the Attorney General's Office

Section 50-3-107, *Tennessee Code Annotated*, requires that the department refer any occupational safety and health-related fine or penalty which remains unpaid for more than six months to the Attorney General's office for enforcement. According to a June 7, 1999, TOSHA report, 613 penalties were past due, and 558 (91%) of those penalties, totaling $1,852,288, were 180 days or more past due. However, although TOSHA has procedures specifying the preparation of a quarterly report on delinquent penalties, staff in the Attorney General's office stated that they do not routinely receive these reports. Our discussions with Department of Labor staff indicated that, although the reports on delinquent penalties have apparently been prepared (at least part of the time), there is confusion about who was responsible for sending the information on delinquent penalties to the Attorney General's office (page 18).

The Department's TOSHA Program Is Hampered by High Rates of Staff Turnover

TOSHA management expressed concerns about the high rate of turnover for compliance officers and consultants. The program managers indicated that the state hires, trains, and certifies these staff only to have private industry hire them away by offering better salaries. TOSHA, as a whole, experienced a turnover rate of about 33% for staff hired between August 1995 and March 1999. According to personnel records, nearly 60% of those individuals reported leaving for better jobs/better pay. As of April 1999, TOSHA Consultative Services had three

vacancies among its consultants. These vacancies and the extent of turnover reduce TOSHA's ability to do its job, as evidenced by the declining numbers of inspections performed and a decline in some types of visits and assistance provided by TOSHA staff over the last several years (page 20).

TOSHA Needs to Continue Monitoring and Improving Its Penalty Assessment Practices

In its previous evaluation report on TOSHA, the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA), recommended that TOSHA reevaluate its penalty calculation practices and take appropriate steps to ensure that its penalty levels become more comparable to the national average. In the February 1999 evaluation report, OSHA recommended that TOSHA "supervisors should thoroughly review safety case files to assure that compliance officers assign proper values for frequency of exposure, proximity to the danger zone, working conditions, other factors and size during penalty assessment. Penalties must be designed to provide an incentive for the employer to correct violations voluntarily." It appears that TOSHA is working to address concerns regarding penalty assessment, but further improvement still needs to be made (page 21).

TOSHA's Abatement Periods Exceed OSHA's Recommended Time Periods

In its performance evaluation report for April 1996 through September 1998, the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA), criticized TOSHA for setting abatement periods that exceeded what would normally be needed to correct many of the hazards noted by the compliance staff. An OSHA activity measures report indicated that the number of serious health violations for which TOSHA assigned abatement periods greater than 60 days had increased during the evaluation period. The report also noted that TOSHA continued to set extended initial abatement periods for serious and other violations that could be more quickly abated (page 23).

Some Divisions Have Not Used Their Authority to Assess Penalties for Violations of the Law

Despite having the statutory authority to assess penalties of up to $100,000, the Workers' Compensation Division has not assessed penalties from employers who have never carried workers' compensation insurance or have let their coverage lapse. In addition, since 1996, when rules authorizing penalty assessments were approved, the Labor Standards Division has not assessed any penalties for wage regulation violations. Our review of a May 1999 department listing entitled "Wage Regulation Penalties" detailed 26 cases; no penalties were assessed, but 3 of the cases were sent to the department's legal section because of nonpayment of wages due employees, and 2 other cases were referred to the U.S. Department of Labor (page 25).

The Board of Employee Assistance Professionals Is Not Self-Sufficient

The board was created in 1993 to license and regulate employee assistance professionals (EAPs), who provide services to the public through programs designed to assist in identifying and resolving job performance problems in the workplace. During calendar year 1998, the board issued only 63 licenses and was not close to being self-sufficient. Sections 4-3-1011 and 4-29-121, *Tennessee Code Annotated*, require that professional licensing boards attached to the Departments of Health and Commerce and Insurance be self-sufficient. Although the Board of Employee Assistance Professionals is not attached to either of those departments, the board has the same duties and responsibilities as other licensing boards and it seems reasonable that this board should meet the same requirements (page 27).

The TOSHA Labor Advisory Council Has Not Met in Seven Years

The TOSHA Labor Advisory Council was created by Section 50-3-919, *Tennessee Code Annotated*, to advise the Department of Labor on all matters in Tennessee pertaining to OSHA. A review of the council's minutes indicated that the council has not met since April 1992, when

it adjourned because of the lack of a quorum (page 30).

Members of the Department's Boards, Committees, Commissions, and Councils Do Not File Conflict-of-Interest Disclosures

The Department of Labor does not require that members of its related boards, committees, commissions, or councils complete a conflict-of-interest disclosure form. No statute requires written disclosure, and nothing came to the auditor's attention during this audit to indicate that board, committee, commission, or council members were influenced by personal or professional conflicts of interest. However, without a means of identifying potential conflicts of interest and discussing and resolving them before they have an impact on decisions, members could be subject to questions concerning impartiality and independence (page 31).

* This issue was also discussed in the 1985 and 1992 performance audits of the department.

OBSERVATIONS AND COMMENTS

The audit also discusses several topics—either new initiatives or problems that did not warrant findings but still require consideration and/or action by the Department of Labor or the General Assembly. These topics include the following: the workforce development initiative; concerns regarding TOSHA's public sector activities; incomplete labor standards inspection reports; Labor Standards' lack of guidelines in some areas; the failure to always use the most current TOSHA report forms; the need to revise statutes requiring the submission of mine maps; and the need to revise the mine foreman certificate (page 10).

ISSUES FOR LEGISLATIVE CONSIDERATION

The General Assembly may wish to consider deleting from statute the requirement that mine operators submit a mine map to the Tennessee Department of Labor (page 15).

The General Assembly may wish to consider terminating the TOSHA Labor Advisory Council because of its inactivity (page 30).

"Audit Highlights" is a summary of the audit report. To obtain the complete audit report which contains all findings, recommendations, and management comments, please contact

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Performance Audit
Department of Labor and Related Entities

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Performance Audit
Department of Labor and Related Entities

INTRODUCTION

PURPOSE AND AUTHORITY FOR THE AUDIT

This performance audit of the Tennessee Department of Labor and nine related entities was conducted pursuant to the Tennessee Governmental Entity Review Law, *Tennessee Code Annotated*, Title 4, Chapter 29. Under Section 4-29-222, the Department of Labor, the Occupational Safety and Health Review Commission, and the Prevailing Wage Commission are scheduled to terminate June 30, 2001. Under Section 4-29-221, the Board of Employee Assistance Professionals is scheduled to terminate June 30, 2000. Under Section 4-29-220, the Board of Boiler Rules, the Elevator Safety Board, and the Occupational Safety and Health Administration Labor Advisory Council were scheduled to terminate June 30, 1999. As provided for in Section 4-29-115, however, these entities will continue through June 30, 2000, for review by the Joint Government Operations Committee of the General Assembly. The Advisory Council on Worker's Compensation, the Medical Care and Cost Containment Committee, and the Safe Employment Education and Training Advisory Committee, although not specifically listed in the Governmental Entity Review Law, are being reviewed under the general authority of Section 4-29-119. The Comptroller of the Treasury is authorized under Section 4-29-111 to conduct a limited program review audit of the department and entities and to report to the Joint Government Operations Committee. The performance audit is intended to aid the committee in determining whether the department and related entities should be continued, restructured, or terminated.

OBJECTIVES OF THE AUDIT

The objectives of the audit were

1. to determine the authority and responsibility mandated to these entities by the General Assembly;

2. to determine the extent to which these entities have met their legislative mandate;

3. to evaluate the efficiency and effectiveness of these entities; and

4. to recommend possible alternatives for legislative or administrative action that may result in more efficient and effective operation of the entities.

SCOPE AND METHODOLOGY OF THE AUDIT

The audit reviewed the activities of the department and related entities from January 1993 through June 1999. The audit was conducted in accordance with generally accepted government auditing standards. The methods used included

1. review of applicable legislation, department policies and procedures, and meeting minutes of various boards, committees, commissions, and councils;

2. attendance at relevant legislative and department committee meetings;

3. examination of the department's records, files, and reports;

4. audit reports and performance evaluations conducted by the U.S. Department of Labor; and

5. interviews with staff of the Department of Labor, the Office of the Attorney General, the Department of Health's Division of Regulatory Boards, the Department of Employment Security, the Middle Tennessee Career Center, the Workforce Development Office, the U.S. Department of Labor, and workers' compensation officials in surrounding states.

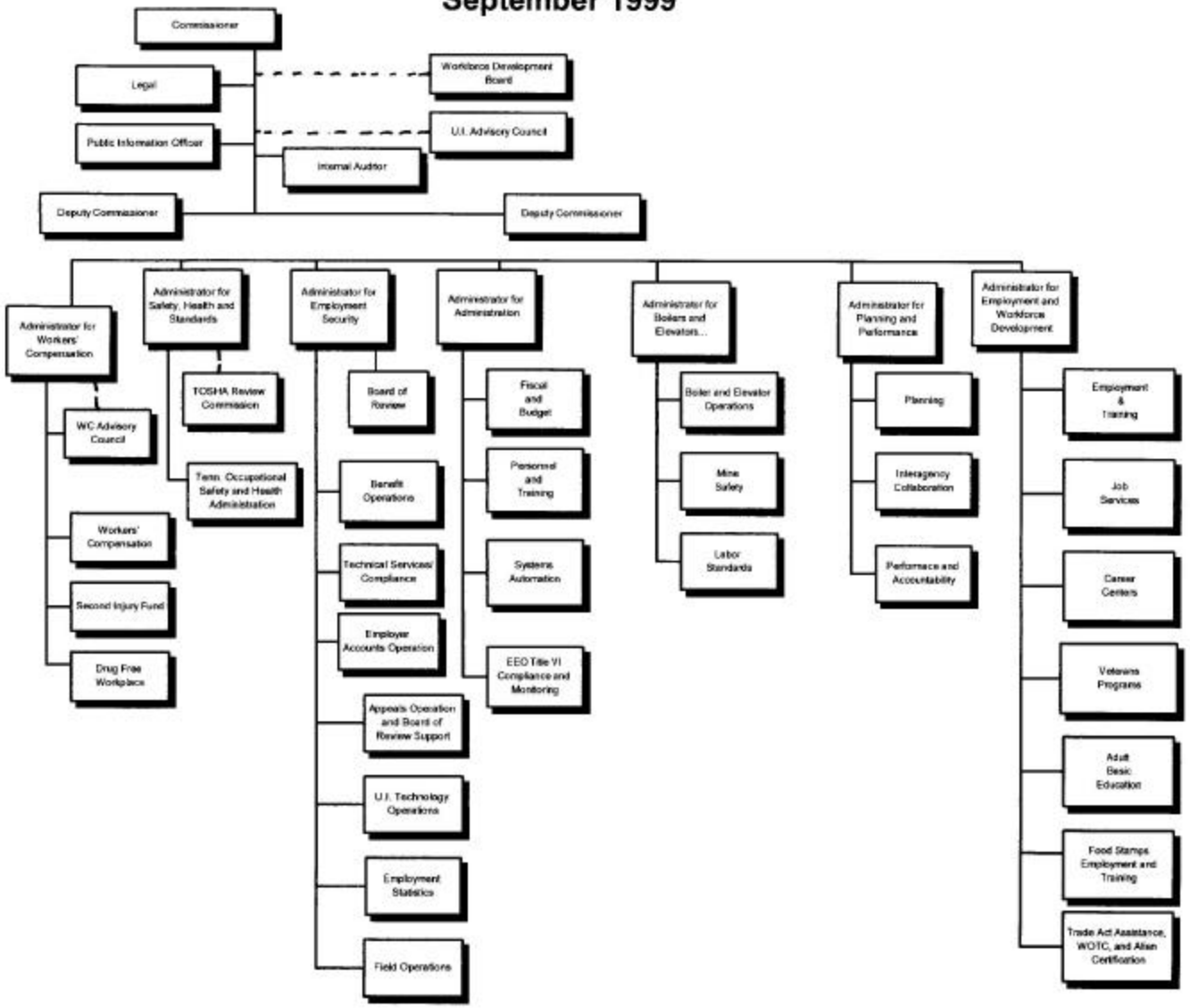
ORGANIZATION AND RESPONSIBILITIES

The audit of the Department of Labor began prior to the department becoming the Department of Labor and Workforce Development (see organizational chart on page 3). Effective July 1999, the Commissioner of Labor was named Commissioner of the new Department of Labor and Workforce Development, and the Departments of Labor and Employment Security began integrating operations. The following divisions were not established at the time of the audit and thus were not included in the review: Employment and Workforce Development, Planning and Performance, and Employment Security. However, the October 1997 performance audit of the Department of Employment Security did include a review of the Unemployment Insurance Program, as well as that department's Field Operations and Job Service areas. The current audit of the Department of Labor included the areas that are described below, although some of the division names and the programs included in each division have changed since the audit work was completed.

Division of Administration

The Division of Administration coordinates the activities of the other divisions; prepares financial statements, budgets, and work programs; and provides for the department's fiscal, personnel, procurement, and systems automation needs.

Department of Labor and Workforce Development
September 1999



Division of Safety, Health and Standards

This division's activities center around the Tennessee Occupational Safety and Health Administration (TOSHA) program. TOSHA is responsible for ensuring safe and healthful on-the-job conditions for every working man and woman in the State of Tennessee. The program has three primary means through which to fulfill its purpose:

- providing safety and health training and education to employers and employees to increase the number of competent occupational safety and health personnel in the state;

- providing administrative and technical resources for the division's use and for the promulgation of related standards and other regulations ; and

- providing for the enforcement of safety and health related standards and regulations in both private and public sectors, monitoring public sector self-compliance programs, and encouraging employers and employees to reduce workplace hazards and implement new and improved safety and health standards.

TOSHA Compliance conducts safety and health inspections and investigations in both the private and public sector. TOSHA conducts four types of inspections. General inspections are conducted from a list of high-hazard businesses identified by the federal Occupational Safety and Health Administration (OSHA). Complaint inspections are in response to complaints, but the inspectors have the option to expand their inspection to a full-scale general inspection if they feel it is warranted. Complaints must be signed (although names are kept confidential) and are triaged based on seriousness/imminent danger assessment. Depending on the seriousness of the complaint, action by TOSHA can consist of anything from correspondence with the employer to an on-site investigation. Accident investigations are mandatory following incidents injuring three or more people or resulting in a death. Follow-up inspections may be done to ensure violations have been corrected. Situations in which TOSHA is made aware of imminent danger to employees are the first inspection priority, accidents are second priority, and general inspections are third priority. State agencies are inspected by TOSHA Public Sector inspectors, and county/local government entities must choose whether to be treated as a public sector or private sector entity (*Tennessee Code Annotated*, Sections 50-3-906 and 50-3-910).

Consultative Services is an outreach unit of TOSHA that primarily helps small businesses (250 employees or less) decrease the number of on-the-job accidents and injuries. In 1995, TOSHA Consultative Services was separated from TOSHA Compliance. On March 1, 1999, the two units were merged back into one, although Consultative Services retains its own program director. Consultative Services operates on a 90-10 federal grant (90% federal funding/10% state funding) and must follow strict federal rules and regulations. There are 15 consultant positions. As of March 9, 1999, there were two vacancies. Training requirements for consultants are the same as for compliance officers (i.e., basic training at federal OSHA's institute in Chicago).

Consultative Services educates employers and employees through one-on-one training and on-site consultation as well as group instruction at the employer's site, professional group

meetings, and chamber of commerce meetings. Staff conduct solicitation, safety and health consultation, compliance assistance, and follow-up visits as well as identifying serious and regulatory hazards. Consultative Services also conducts safety and health program evaluation/assistance.

Consultative Services offers two voluntary protection programs: STAR and SHARP. The STAR (Safety Through Accountability and Recognition) program is a federally encouraged program and, according to the director of Consultative Services, STAR certification is highly coveted nationwide. Tennessee's program, which began in 1996, rewards workplaces with a strong emphasis on occupational health and safety. Only 5 out of 27 Tennessee companies applying have received STAR certification thus far. Consultative staff evaluate applications and perform on-site visits to those businesses seeking STAR designation. Businesses receiving STAR certification are removed from TOSHA's programmed inspection list for the duration of their participation in the STAR program. STAR certification lasts three years and requires the submission of annual reports to Consultative Services. At the end of three years, businesses must go through the application process again to retain their STAR certification. The SHARP (Safety and Health Achievement and Recognition) program, similar to STAR, is for smaller, high-hazard employers. Businesses that receive SHARP designation are removed from programmed compliance inspection lists for 12 months. Since Tennessee's program began in 1998, 12 companies have requested applications. The first SHARP designation was awarded in April 1999.

Division of Boilers and Elevators, Mining, Labor Standards, and Labor Research and Statistics

This division includes the following major sections:

Boiler and Elevator Operations. This section is responsible for the administration and enforcement of the Tennessee Boiler and Pressure Vessel Inspection Law and the Tennessee Elevator Inspection Law. Owners must pay a fee to the state for inspections of boilers and elevators. Revenue collected for services (inspections and permit issuance) during fiscal year 1998 totaled nearly $934,000 for boilers and $1.17 million for elevators.

"Elevators" include dumbwaiters, escalators, construction and freight elevators, lifts in sewage systems, trams, and ski lifts in addition to regular building elevators. As of May 14, 1999, there were 8,837 active elevators registered with the state. During fiscal year 1998, the section issued 8,238 permits and performed 15,176 inspections. State inspectors conduct elevator inspections twice a year with the exception of elevators located within the city limits of Memphis. Except for initial inspections of new elevators and inspections of elevators in state-owned buildings, the city of Memphis inspects elevators within the city limits.

"Boilers" include fired and unfired vessels and low- and high-pressure vessels, ranging from air tanks at service stations to huge boilers used for heating. As of May 14, 1999, there were 63,590 boilers registered with the state. Boiler inspections are conducted by insurance companies or state inspectors, and one private business conducts inspections of its own boilers. Boiler and elevator inspections are conducted according to national standards, such as those developed by the American Society of Mechanical Engineers. During fiscal year 1998, the state

issued 27,779 boiler and pressure vessel inspection certificates and conducted 7,808 inspections; insurance company inspectors conducted 16,996 inspections; and the private business conducted 1,257 inspections.

Mine Safety. The Mine Safety section licenses underground and strip mines and trains miners, operators, and mine owners. The section also coordinates state rescue efforts in the event of a mine disaster and maintains two mine rescue teams. The Mine Rescue Advisory Committee and the Mine Safety Training Advisory Committee aid in these endeavors. Mine Safety is also responsible for testing and certifying mine foremen and maintaining mine-related data and mine maps.

Labor Standards. The Labor Standards section is responsible for the enforcement of the Child Labor, Wage Regulation, and Prevailing Wage Acts, as well as providing administrative support to the Board of Employee Assistance Professionals (EAPs). To enforce the three acts, Labor Standards has five persons in the office to take phone calls and deal with the general public and eight inspectors stationed across the state: two in Memphis, two in Nashville, and one each in Jackson, Chattanooga, Knoxville, and Kingsport.

The Child Labor Act restricts work-related activities of 14- to 18-year-olds. To enforce this act, the section conducts routine inspections, investigates complaints, and investigates work-related accidents involving minors. Child labor complaints can take any form—telephone call, letter, workers' compensation report involving a minor, etc.—and all must be investigated. Investigators are assigned specific counties and handle all cases from those counties. Violation of child labor laws is a Class A misdemeanor with a civil penalty of $150 to $1,000 per day or a Class C felony for pornography. Violators are given 20 days from notice of proposed penalty to appeal. Since 1996, when the rules were approved allowing penalties, 46 employer sites have been assessed civil penalties totaling $31,225 for violations of child labor laws. One case in which the penalty has not been paid has been turned over to the department's legal division.

The Wage Regulation Act requires employers to give employees prior knowledge of their pay rate, to pay at least twice a month, and to provide break periods. The Labor Standards section is also responsible for investigating charges of sex discrimination in regard to pay.

The third act that Labor Standards is responsible for enforcing is the Prevailing Wage Act. This act requires a certain rate of pay on all state-funded projects over $50,000. In addition to routine inspections and investigation of complaints, Labor Standards requires copies of payrolls and audits the contractors for compliance. According to staff, Prevailing Wage complaints have been reduced because inspectors are now included in pre-construction hearings, where they inform everyone of the requirements. Investigations involve interviews on the job site, making sure all required wage postings are displayed, and audits of payrolls. If a violation is found, the contractor is notified of the violation and the amount owed to the employee. The division's disciplinary options are limited, because the division may cite contractors but may not penalize them.

Division of Workers' Compensation

Workers' compensation laws were enacted to provide prompt and reasonable income and medical benefits to work-accident victims or their dependents, regardless of fault; to reduce court delays, costs, and workloads resulting from personal-injury litigation; and to encourage maximum employer interest in safety and rehabilitation. Since the early days of the initiation of the Workers' Compensation Law in Tennessee, the Department of Labor, Division of Workers' Compensation, has been charged with specific record keeping, administrative, and enforcement responsibilities. The division also has the statutory authority to assess administrative penalties for noncompliance with the provisions of the Workers' Compensation Law.

Since 1993, the division has received an average of 38,765 accident reports per year, opened an average of 35,840 cases each year, and closed an average of 22,538 cases. Since 1991, the highest occupational injury and illness rates nationally and in Tennessee are in the industry categories of agriculture/forestry/fishing, construction, manufacturing, and transportation/public utilities. In 1997, Tennessee's incidence rates were lower than rates for the U.S. in all of the 11 industry categories except private sector, manufacturing, transportation/public utilities, and wholesale trade. Overall, rates have decreased since 1991 on both the state and national level.

The Second Injury Fund provides compensation for subsequent permanent injury after sustaining a previous permanent injury (*Tennessee Code Annotated*, Section 50-6-208). Employees make claims against the fund by filing a lawsuit against the state and naming the director of the workers' compensation division as a defendant. Since 1993, an average of 445 cases a year are filed against the fund, with yearly disbursement of $4-6 million. Since 1995, $398,635 has been reimbursed to insurance companies following their successful appeal of benefits.

Prior to 1996, the Department of Labor's Workers' Compensation Division was responsible for investigating potential fraud. However, the division had little success because district attorneys were reluctant to spend their time on these low-dollar, misdemeanor cases. As a result of the 1996 Workers' Compensation Reform Act, a special workers' compensation fraud unit was established within the criminal investigation division of the Tennessee Bureau of Investigation (TBI). This special unit coordinates its investigations with the departments of Labor and Commerce and Insurance and other state and federal law enforcement agencies. The unit focuses on all aspects of workers' compensation fraud perpetrated by employees, employers, health care providers, attorneys, and insurance agents or companies. The Workers' Compensation Fraud Unit consists of one assistant special agent in charge, seven special agent-criminal investigators, one law enforcement information coordinator, and two secretaries.

Not all potential cases referred to the fraud unit are fully investigated. A full investigation is performed only if the local district attorney will prosecute a case. In fiscal year 1997, there were 49 referrals to the TBI: 14 referrals were not pursued for various reasons; 11 were being fully investigated after discussions with the local district attorney; and 24 were undergoing preliminary investigations. In fiscal year 1998, there were 65 referrals; 31 referrals were not pursued and 45 cases were investigated, some dating to previous years. Five

indictments were obtained in 1997 and four indictments and four felony convictions were obtained in 1998.

The TBI's Workers' Compensation Fraud Unit and the Department of Labor's Workers' Compensation Division work to educate groups about the prevention and detection of workers' compensation fraud. Presentations are made to various groups across the state and relevant literature is produced and distributed. A workers' compensation fraud bulletin and an internet web site have been designed by the TBI to inform people of how to report fraud and the warning signs that may indicate that fraud has occurred. There are also fraud hotlines at the Department of Labor's Workers' Compensation Unit and the Department of Commerce and Insurance.

Other Related Entities

Nine additional entities are administratively attached to the Department of Labor and assist the department's divisions in fulfilling their regulatory responsibilities. Each entity is briefly described below. (Related entities that were previously attached to the Department of Employment Security or that concern workforce development were not included in this audit.)

TOSHA Labor Advisory Council (created by Section 50-3-919, *Tennessee Code Annotated*). The council, whose six members are appointed by the Governor, advises the department on all matters in Tennessee pertaining to OSHA. Currently, all members' terms have ended, the last two on June 30, 1999. The council last met on April 15, 1992. (See finding 8.)

Occupational Safety & Health Review Commission (created by Section 50-3-801, *Tennessee Code Annotated*). The commission, whose three members are appointed by the Governor, reviews citations and monetary penalties assessed by TOSHA. During calendar year 1998, the commission met seven times and heard 28 cases. The disposition of those cases was as follows:

In ten cases, the commission affirmed TOSHA's actions.

In seven cases, the commission modified TOSHA's actions.

Six cases were continued.

Two cases were deferred.

Two cases were dismissed.

One case was amended.

Prevailing Wage Commission (created by Section 12-4-404, *Tennessee Code Annotated*). The commission determines the prevailing wage rate for state construction projects. The rate is set annually for highway construction projects and every two years for building construction projects. To aid in setting the rate, a voluntary wage survey is conducted. However, the commission has expressed concern over the survey response rates, which are typically less than ten percent. The commission is considering establishing a task force to identify methods to improve the amount of data received through the survey. The commission consists of five members and meets three times per year, usually in August, September, and October.

Elevator Safety Board (created by Section 68-121-102, *Tennessee Code Annotated*). The board, which consists of five members appointed by the Governor, regulates the operation, maintenance, construction, and renovation or alteration of elevators. As of July 13, 1999, the board had four members and one vacancy. The vacancy was created in 1997, when a member (who was also the racial minority member of the board) resigned. The board meets quarterly. (See page 5.)

Board of Boiler Rules (created by Section 68-122-101, *Tennessee Code Annotated*). The board formulates definitions, rules, and regulations for the safe and proper construction, installation, repair, use, and operation of boilers in this state. The board, which meets quarterly, consists of six members appointed by the Governor. (See page 5.)

Board of Employee Assistance Professionals (created by Section 62-42-102, *Tennessee Code Annotated*). The board regulates and licenses employee assistance professionals (EAPs) who do not receive certification from other regulatory entities. Section 62-42-111, *Tennessee Code Annotated*, defines an EAP as a licensed employee assistance professional who is qualified to provide employee assistance program services for employees and their families. These services are designed to assist in the identification and resolution of productivity problems associated with employees impaired by personal concerns, including health-related, marital, family, financial, alcohol, drug, legal, emotional stress, or other personal concerns which may adversely affect employee job performance. In 1998, 63 EAPs were licensed in Tennessee. The board, which consists of five members appointed by the Governor, met seven times in 1998. As of March, the board had met twice in 1999. (See finding 7.)

Advisory Council on Workers' Compensation (created by Section 50-6-121, *Tennessee Code Annotated*). The council reviews workers' compensation in Tennessee and issues an annual report of its findings and conclusions on or before May 1 of each year. The council's role is strictly advisory, but it may make recommendations to the Commissioners of Labor and Commerce and Insurance relating to adoption of rules and legislation. The council makes an annual presentation to those standing committees of the General Assembly with jurisdiction over workers' compensation issues. The council consists of seven voting members: three representing employers; three representing employees; and the state treasurer (or his designee), who serves as the chair. The Speaker of the House of Representatives, the Speaker of the Senate, and the Governor each appoint one employer and one employee representative to the council. The Governor also appoints five nonvoting members of the council. The council meets at least twice each year.

Medical Care and Cost Containment Committee (created by Section 50-6-125, *Tennessee Code Annotated*). The committee advises the commissioner on issues relating to medical care and cost containment in the workers' compensation system, approves regulations before they become effective, and assists the commissioner in the implementation of those regulations. The committee also reviews disputes between insurance companies and providers over charges and payments. The committee consists of eight voting members appointed by the Commissioner of Labor: three licensed physicians, two members representing employers, two representing employees, and a hospital employee. The department's medical director serves as a nonvoting *ex officio* member of the committee. The committee met twice in 1997 and four times in 1998.

Safe Employment Education and Training Advisory Committee (created by Section 50-6-503, *Tennessee Code Annotated*). The duties of the committee, determined by the Commissioner of Labor, include making recommendations concerning occupational safety and health grant application procedures and criteria for grant approval; occupational safety and health grant recipients; and revocation of grants to recipients failing to comply with grant criteria established by the commissioner. The committee also receives and processes occupational safety and health grant applications. The committee consists of seven members appointed by the commissioner: three representing employers, three representing employees, and one representing the insurance industry. The committee (which meets as needed, at the request of the commissioner) last met in October 1998.

OBSERVATIONS AND COMMENTS

The topics discussed below either describe new initiatives or detail problems that did not warrant findings but still require consideration and/or action by the Department of Labor or the General Assembly.

WORKFORCE DEVELOPMENT INITIATIVE

In 1998, the U.S. Congress passed the Workforce Investment Act (WIA), which provides the framework for a national workforce preparation and employment system designed to meet the needs of the nation's businesses, job seekers, and those who want to further their careers. Title I of the WIA is based on five elements: (1) training and employment programs must be designed and managed at the local level, where needs are best understood; (2) customers must be able to conveniently access the employment, education, training, and information services they need at a single location in their neighborhoods; (3) customers should have choices in deciding the training program that best fits their needs and the organizations that will provide that service; (4) customers have a right to information about how well training providers succeed in preparing people for jobs; and (5) businesses will provide information and leadership, and will play an active role in ensuring that the system prepares people for current and future jobs. Title II reauthorizes Adult Education and Literacy programs for fiscal years 1999-2003. Title III amends the Wagner-Peyser Act to require that Employment Service/Job Service activities become part of the "One-Stop" system and establishes a national employment statistics initiative. Title IV reauthorizes Rehabilitation Act programs through fiscal year 2003 and links these programs to state and local workforce development systems. Title V contains general provisions that include authority for state unified plans relating to several workforce development programs; incentive grants for states exceeding negotiated performance levels under WIA, Adult Education Act, and Perkins Vocational Education Act; and transition provisions.

The General Assembly passed the Tennessee Workforce Development Act of 1999, creating a new department that would integrate all components of the Departments of Labor and

Employment Security, along with a few workforce-related components from the Departments of Education and Human Services (see table on page 12). In addition the legislation calls for closer collaboration among the aforementioned departments, the Department of Economic and Community Development, and the Tennessee Board of Regents. The act proposes to accomplish these goals through the establishment of comprehensive state and local workforce investment boards. Overall, the Tennessee Workforce Development Act of 1999 is designed to streamline the state's workforce development system, through a responsible, competitive, private-sector driven approach.

The Tennessee career centers, which unify numerous training, education, and employment programs into a single, customer-friendly system, are a key component of the new legislation. Since September 1998, career centers have opened in Chattanooga, Nashville, Knoxville, Memphis, Johnson City, and Clarksville. Career centers are scheduled to open in Columbia and Jackson during fall 1999. By June 2000, six more centers are scheduled to open in Morristown, Kingston, Cleveland, Cookeville, Tullahoma, and Dyersburg.

The federal legislation requires states to implement the new statutes by July 1, 2000. Effective July 1999, the Commissioner of Labor was named Commissioner of the new Department of Labor and Workforce Development, and the Departments of Labor and Employment Security began integrating operations.

CONCERNS REGARDING TOSHA'S PUBLIC SECTOR ACTIVITIES

Public-sector employers are required to establish and maintain effective and comprehensive occupational safety and health programs. These employers include state departments, commissions, boards, or other agencies, as well as county or municipal governments electing public-sector status. County and municipal governments not electing public sector status are treated like private-sector employers. TOSHA's Public Sector staff enforce the public sector statutes through inspections, investigations, and consultations. Our review indicated that Public Sector staff (five compliance officers plus central office staff) have appropriately focused their limited resources on operations with a higher risk for accidents or employee injuries. However, we did identify two areas of concern: inspections of state agencies and the need to update public sector employers' occupational safety and health plans.

Not All State Agencies Inspected Every Two Years

TOSHA Rule 0800-1-5-.08(3)(a) requires monitoring inspections to take place at such times and in such places of employment as the commissioner may direct. Monitoring inspections of each public-sector employer are to be conducted at least every two years and cover, at a minimum, inspection of at least one worksite in at least two departments or establishments. (According to department staff, TOSHA considers the State of Tennessee, rather than each individual department, commission, or other agency, to be a public sector employer.) The selection of entities to inspect is based on several factors including accident ratios, type of citations issued previously, and number of complaints. Agencies in which most work is carried out in an office setting are considered low priority inspections.

Table 1
Workforce Development Components

	Functional *	**Collaborative** **
Labor	Economically Disadvantaged Adult Older Worker Dislocated Worker Summer Youth Year Round Youth TOICC Workers' Compensation Boiler & Elevator Inspection TOSHA Mine Inspection Labor Standards	
Education	Adult Basic Education	Vocational Education Alternative Schools Adult High Schools Jobs for TN Graduates Displaced Single Parents Goal 2000 Education Edge Drop-out Prevention Tech Prep K-12
Higher Education		Technology Centers Technical Institutes Community Colleges 4-year Colleges
Human Services	Food Stamp Employment & Training	Families First Welfare-to-Work Vocational Rehabilitation
Employment Security	Trade Act Assistance Making It Happen Unemployment Compensation Labor Market Information Job Service Veterans Employ. & Training Alien Labor Certification Work Opportunity Tax Credit	
Economic and Community Development		Industrial Training Services **Commission on Aging** **AmeriCorps-Job Corps** **HUD Employment Activities** **TN Kids**

***** Those programs that would become a component of any new workforce development department.
****** Those programs that would remain within their current department but would collaborate with the new workforce development department in the delivery of services.

Source: Department of Labor.

We reviewed the department's list of county and municipal government public sector inspections for calendar years 1996 through 1998 and the list of state agency inspections for 1993 through 1998. In addition, we reviewed the files for 20 public sector entities (ten state agencies and ten county/local governments.) According to the local list, TOSHA conducted 282 local government inspections in 1996, 477 inspections in 1997, and 452 inspections in 1998. All the local entities in the file review had been inspected in the last two years, and both reviews confirmed TOSHA's focus on higher risk local operations such as police and sheriff departments, jails, fire departments, water treatment plants, and city and school maintenance shops.

The review of TOSHA's state inspection list showed a decline in the number of state agency inspections—64 inspections in calendar year 1993, 40 in 1994, and between 23 and 28 in 1995 through 1998. A comparison of state agencies and state inspections identified 14 entities that had not been inspected during the six-year period. Public Sector management stated that the section is not able to inspect all state agencies every two years, because of the small staff and time spent on training. For example, the Tennessee Bureau of Investigation has not been inspected since at least 1992, even though there is a crime laboratory and possible hazards to employees because of chemicals and human blood. In addition, the Public Sector unit does not have an industrial hygienist to conduct health-related inspections (which are needed for facilities such as the crime lab): such staff must be borrowed from the Private Sector unit whenever an industrial hygienist is needed to investigate a complaint. On a positive note, the state agency inspections do appear to be focused on entities with a higher risk for an accident or employee injury. Operations such as prisons, highway maintenance headquarters, state parks, and vocational training centers accounted for the majority of inspections during the period reviewed.

Public Sector Occupational Safety and Health Plans Not Up-to-Date

Our review of the files for 19 public sector entities (nine state agencies and ten county/local governments) found that only one state agency file—the Department of Tourist Development's—did not have an Occupational Safety and Health Plan. However, 16 of the plans on file had been submitted in the 1970s (between 1973 and 1976); the other two were submitted in 1985 and 1995. There was no indication that the plans had been reviewed or updated since their initial submission to the Department of Labor. Because of possible changes in entities' duties and responsibilities, changes in technology, and increased awareness of safety and health risks, an up-to-date plan is needed for the Department of Labor to assess risks and the entities' response to those risks. Such assessments could help the department better focus its inspections on entities whose employees' safety and health may be at greater risk.

Without periodic inspections and up-to-date safety and health plans, it is difficult for TOSHA to determine the effectiveness of public-sector employers' occupational safety and health programs. TOSHA should reassess its state inspection schedule to ensure that all high-risk operations are inspected every two years and that all agencies are inspected periodically. TOSHA should also consider assigning an industrial hygienist to the Public Sector unit, at least

part-time. In addition, TOSHA should (1) review its public sector files to determine whether all state, county, and local government entities have submitted an Occupational Safety and Health Plan and (2) obtain plans from any entities that have not submitted a plan. TOSHA should require that public sector entities review their plans periodically (at least every five or ten years), make any necessary revisions, and submit updated plans to the Department of Labor.

LABOR STANDARDS INSPECTION REPORTS DO NOT CONTAIN ALL NEEDED INFORMATION

Inspectors in the Labor Standards section do not routinely include all necessary information on the inspection reports. We reviewed 413 inspectors' reports for fiscal years 1997 and 1998—169 child labor, 169 wage regulation, and 75 prevailing wage reports. Only one of these reports indicated that the inspector had recommended a penalty. There was also no indication that employers had been warned or given formal citations. The majority of child labor inspection reports noting violations did not have the dated signature of the employer attesting that the violations had been fixed, as required. Those reports that were signed had not been signed within the inspector's prescribed time period.

Inspectors should completely fill out their inspection reports, noting any citations or penalties assessed, and detailing, if applicable, why no warning, citation, or penalty was issued when violations were noted. Inspectors should also make sure employers with violations sign and date the inspection reports, attesting to correction of the problems.

LABOR STANDARDS' LACK OF GUIDELINES CONCERNING PENALTY ASSESSMENTS AND TIMEFRAMES FOR INVESTIGATIONS AND CORRECTION OF VIOLATIONS

According to department staff, the Labor Standards section has not developed guidelines for determining the amount of penalty to assess for violations of child labor or wage regulation laws. (The statutes provide a range of penalty amounts that may be assessed, at the commissioner's discretion.) Currently, the section's director simply recommends an amount to the assistant commissioner. Without guidelines, staff may not be consistent in assessing penalties and may have difficulty defending the amount assessed.

In addition, the Labor Standards section has not established time guidelines for investigations of alleged violations of the Child Labor, Wage Regulation, or Prevailing Wage Acts. Such guidelines for inspectors would help ensure that cases are investigated and resolved in a timely manner. Inspectors also lack guidelines to help them set timeframes for employers to correct violations of child labor laws. The inspectors are supposed to consider the severity of the violation but otherwise set timeframes at their own discretion. Guidelines would help ensure employers with similar types of violations are treated consistently.

Labor Standards management should establish (1) specific time guidelines for the handling and closure of investigations and for the correction of violations, depending on their

severity and (2) specific guidelines for assessing penalties for violations of the child labor and wage regulation laws.

MOST CURRENT TENNESSEE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (TOSHA) REPORT FORMS NOT ALWAYS USED

TOSHA compliance officers did not always use the most current inspection forms and worksheets adopted by the department. Some compliance officers used federal OSHA inspection forms instead of the TOSHA inspection forms. A review of 26 case files found that, in 14 cases (54%), compliance officers had used out-of-date inspection forms. In ten cases (38%), out-of-date worksheets were used. Three of the six 1998 inspection files reviewed contained federal OSHA inspection forms instead of those developed by TOSHA. TOSHA should require that all compliance officers use the most up-to-date forms to ensure that inspections are uniform across the state and are consistent with current regulations and requirements.

MINE MAPS NOT SUBMITTED

According to *Tennessee Code Annotated*, Section 59-1-116, the Mine Safety section is not supposed to issue a mine license until a map of the mine is properly submitted to the Department of Labor. *Tennessee Code Annotated*, Section 59-2-106 states that Mine Safety may (at the end of each year) forward the map or plan to the owner, operator, or superintendent to have the map brought up-to-date. However, a file review of 19 mine operations found that only two mine maps had been submitted as required. One of the maps was dated August 26, 1993, and the other map was dated April 10, 1997.

The director of Mine Safety confirmed that the section has not been requiring mine owners, operators, or superintendents to submit mine maps. The federal Mine Safety and Health Administration (MSHA) requires that an updated map of each mine be submitted to it every six months. Because MSHA's maps are more current than the state's and would be available to the mine rescue team if an accident occurred, Mine Safety considers it an unnecessary expense to the mine companies to require that they submit maps to the state. The Mine Safety director indicated that this statutory requirement could be deleted and have no serious effect on the mining industry, especially since Mine Safety no longer conducts mine inspections.

The General Assembly may wish to consider deleting from statute the requirement that mine operators submit a mine map to the Tennessee Department of Labor.

MINE FOREMAN CERTIFICATE NEEDS REVISION

The Mine Safety section administers the mine foreman examinations quarterly. There are four different exams: Underground Class A, Class C Open Pit, Class C Metal, and Class C Preparation Plant. Each test is multiple choice, and an individual must answer at least 75% of

the questions correctly. The Class A examination also has a mine map test and an oral exam. In addition to passing the examination, an individual must have five years of experience in underground coal mines for a Class A license or at least one year of experience working at a surface mine for a Class C certificate.

The mine foreman certificate (issued once the applicant has met all requirements) states that the individual has appeared before, and been examined by, the Board of Mine Foreman Examiners. However, this board was terminated by the Department of Labor in the fall of 1994, in an effort to cut costs. The department should revise the mine foreman certificate to delete the reference to the Board of Mine Foreman Examiners.

FINDINGS AND RECOMMENDATIONS

1. The department cannot fully enforce workers' compensation laws because it has not identified all employers required to carry workers' compensation insurance

Finding

Sections 50-6-102 and 50-6-405, *Tennessee Code Annotated*, require that all employers with five or more employees carry workers' compensation insurance. However, the Department of Labor does not have an effective system in place to identify all employers with five or more employees and, therefore, cannot ensure that all those employers have workers' compensation insurance.

According to department staff, insurance companies provide information to the department detailing employers with workers' compensation insurance, the dates of that coverage, and any lapses in coverage. However, this process does not identify employers who have never carried insurance even though they are required by law to do so. In addition, the department's current computer system does not automatically notify staff when a business loses its coverage or ceases to pay premiums. The system tracks coverage dates but does not automatically produce warning and penalty letters for employers whose coverage has lapsed. As a result, department staff may only realize an employer has no coverage when an injured worker complains or insurance companies notify the state.

Department rule 0800-2-1-.04 states that the workers' compensation division shall

> identify employers in violation of [the law] by obtaining list(s) of employers subject to the Workers' Compensation Law from other Departments in state government such as Employment Security, Revenue, etc. A comparison of these lists will be made with the Division's coverage records and employers without coverage identified.

In response to the 1985 performance audit, the department stated that a "computerization proposal that includes the use of employers listed with the Department of Employment Security should greatly enhance the Division's ability to monitor insurance coverage." (Employment Security maintains information on the state's employers and number of employees as part of its Unemployment Insurance Program.) During work on the 1992 performance audit, staff of Employment Security stated that they would be able to provide Labor with the number of people employed by each company beginning in 1993, when the Department of Employment Security changed to an IBM-compatible computer system. The department did not change to an IBM-compatible system; however, according to Employment Security staff interviewed for the current audit, compatibility should not be an issue. They already furnish data regularly to Human Services, Revenue, and other agencies and should be able to provide Labor with the information they need as well. (Effective July 1999, the Departments of Labor and Employment Security merged to become the Department of Labor and Workforce Development.)

Tennessee's new workers' compensation computer system, which went on-line July 14, 1999, will automatically produce the warning and penalty letters to employers whose coverage has lapsed. However, the new system will still not be able to identify those employers required to carry workers' compensation insurance, because it cannot interface with Employment Security's database. (Other southeastern states such as Florida and Alabama do not appear to have this problem; they routinely compare their workers' compensation database against the unemployment insurance database.)

Chapter 217 of the Public Acts of 1999 requires that "no later than December 31 of each year, the Department of Labor shall produce a report that includes a listing of the name of each covered employer that failed, during the preceding state fiscal year, to provide workers compensation coverage or qualify as a self-insured employer as required by law." Without a system to identify all the employers who are required to carry workers' compensation insurance, the department cannot fully comply with this new requirement, enforce workers' compensation laws, or ensure that employees will be compensated in the event of a job-related injury.

Recommendation

As recommended in the two previous (1985 and 1992) performance audits, the department should develop a list of all employers required to carry workers' compensation insurance and take action to ensure that those employers without such insurance comply with statutory requirements. Workers' Compensation management should work with Unemployment Insurance staff (and obtain Office for Information Resources input, if needed) to develop a process to compare information in the two divisions' databases in order to identify employers who are not in compliance with workers' compensation laws.

Management's Comment

We concur. The Division of Workers' Compensation will work with the Division of Employment Security to develop and maintain a list of employers who are subject to the

Workers' Compensation law. The division will also utilize any and all other available sources in an effort to make the employer list as complete as possible.

House Bill 1453 passed by the General Assembly requires the Department of Labor and Workforce Development to produce a report that includes a listing of the name of each covered employer that failed, during the preceding state fiscal year, to provide workers' compensation coverage or qualify as a self-insured employer. The report must also include the penalty assessed and the payment status. The legislation also requires the Oversight Committee on Workers' Compensation to review issues related to non-compliant employers. The committee must report recommendations to the General Assembly by January 15, 2000.

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2. The department is not sending delinquent TOSHA citation cases to the Attorney General's office

Finding

Section 50-3-107, *Tennessee Code Annotated*, requires that the department refer any occupational safety and health-related fine or penalty which remains unpaid for more than six months to the Attorney General's office for enforcement. According to a June 7, 1999, TOSHA report, 613 penalties were past-due, and 558 (91%) of those penalties, totaling $1,852,288, were 180 days or more past due. TOSHA notations on the report indicated that the department had sent 391 (70%) of those cases to the Attorney General's office for collection; 100 (18%) were being contested and 67 (12%) had not been finalized through a closing meeting with the business being penalized. In addition, TOSHA has procedures specifying the preparation of a quarterly report on delinquent penalties to be sent to the department's legal section and the Attorney General's office. However, staff in the Attorney General's office stated that they do not routinely receive these reports from the Department of Labor. According to the staff, there are only four TOSHA cases currently in litigation; in addition, one other company had three penalty cases go through the court system recently. Our discussions with Department of Labor staff indicated that, although the reports on delinquent penalties have apparently been prepared (at least part of the time), there is confusion about who was responsible for sending the information on delinquent penalties to the Attorney General's office.

It is unlikely that many of these penalties will ever be collected. Of the 558 penalties that were 180 days or more past due, 261 (47%) were assessed between 1985 and 1995. Since those penalties were assessed, the businesses involved may have moved, closed, or filed for bankruptcy. By including on its delinquent penalty reports so many old penalties that have little or no chance of being collected, TOSHA may be shifting the focus away from more recent penalties that could be collected. In addition, many of the penalty amounts are relatively small; 257 (66%) of the 391 penalties ready for collection (i.e., those that had been finalized and were not being contested) were less than $1,000 each, and approximately 40% were less than $500 each. It would not be cost-effective to pursue collection of these small penalties through the court system. However, Section 50-3-107(a), *Tennessee Code Annotated*, does allow the Attorney General to contract with one or more private entities or individuals for the collection of

fines and penalties. It appears that this option could be used to collect smaller penalties at less cost to the state.

When penalties assessed by the TOSHA are not collected, the state loses revenue and businesses have less incentive to comply with safety and health requirements and to pay assessed penalties promptly.

Recommendation

Department of Labor management should work to improve the communication between TOSHA and the Attorney General's office, to ensure that the Attorney General's office is notified of delinquent penalties and that those penalties are collected. The department's Legal Section and TOSHA management should develop procedures that specify who is responsible for preparing and transmitting reports on fines that are over 180 days past due. TOSHA management should monitor report submission to ensure the information is received by the Attorney General's office. TOSHA management should also work with the Attorney General's office to determine which cases merit legal action, which should be sent to collection agencies, and which accounts the department should request be written off as bad debt in accordance with Department of Finance and Administration policy.

Management's Comment

We do not fully concur. During the initial reporting stages, there were some communication problems, which have since been corrected. Beginning this year, quarterly reports are now being forwarded directly from TOSHA to the Attorney General's Office. Copies of this report are also being sent to the Department of Labor and Workforce Development's Legal Section.

During the month of September, TOSHA submitted a request to write-off 155 delinquent cases dating back to 1986, with penalties under $500. This action was taken as part of a joint effort between TOSHA and the Attorney General's Office, which began in Spring 1999, to reduce the backlog of potentially uncollectable cases.

It should be noted that 18% (100 cases) were being contested and another 12% (67 cases) had not been finalized with the companies being penalized. We are legally prohibited from forwarding these cases to the Attorney General's Office for collection. TOSHA will continue to monitor the delinquent penalty caseload on a quarterly basis. We have been informed by the Attorney General's Office that the current dollar amount below which the office would not pursue litigation is under review and may be raised from $500 to $1,000.

3. The department's TOSHA program is hampered by high rates of staff turnover

Finding

Tennessee Occupational Safety and Health Administration (TOSHA) management expressed concerns about the high rate of turnover for compliance officers and consultants. The program managers indicated that the state hires, trains, and certifies these staff only to have private industry hire them away by offering better salaries. TOSHA, as a whole, experienced a turnover rate of about 33% for staff hired between August 1995 and March 1999. According to personnel records, nearly 60% of those individuals reported leaving for better jobs/better pay. As of April 1999, TOSHA Consultative Services had three vacancies among its consultants. These vacancies and the extent of turnover reduce TOSHA's ability to do its job, as evidenced by the declining numbers of inspections performed and a decline in some types of visits and assistance provided by TOSHA staff over the last several years.

Management of both the TOSHA Compliance and Consultative Services programs attributed the decrease in certain activities to the high turnover. They stated that experienced personnel must spend part of their time training the new personnel rather than performing inspections or working with client companies. Also, monthly performance evaluations of compliance officers were discontinued because the two individuals who performed the evaluations were needed for on-the-job training of new employees.

TOSHA's staff have the lowest average minimum starting salary when compared to similar compliance officer/consultant positions in seven other southeastern states. In an attempt to address staffing problems, the Department of Labor requested that the Tennessee Department of Personnel review TOSHA's Occupational Safety Specialist and Industrial Hygienist classifications. In a June 21, 1999 memo, the Department of Personnel recommended that, in recognition of TOSHA's difficulty in recruiting and maintaining employees in these classifications, the Department of Labor use in-range hiring at the third step (i.e., increase the entry minimum salary by two 4.5% increases) of the range for the Industrial Hygienist and Occupational Safety Specialist classes at all levels through the supervisory level. All employees currently paid below the third step of the range should be given a salary increase to the third step. Personnel also recommended that, to prevent compression issues as a result of the in-range hiring, the Department of Labor adjust the salaries of employees with one or more years of experience by one step (4.5%).

TOSHA's inspection, consultation, and training and education activities help in ensuring the health and safety of Tennessee workers. In order to adequately perform these activities, it is important that TOSHA have a stable, experienced work force.

Recommendation

TOSHA and the Department of Labor should make it a priority to fill positions as quickly as possible and to make the salaries more competitive with private business and the other southeastern states so they are able to attract and retain trained officers. The department should

follow the recommendations of the Department of Personnel and adjust the Occupational Safety Specialist and Industrial Hygienist salaries accordingly.

Management's Comment

We concur. The division has implemented all of the recommendations from the Department of Personnel. Entry level salaries for safety and health inspectors have been increased by two steps in addition to current safety and health personnel receiving salary adjustments ranging from two to three steps. The TOSHA Division has begun an aggressive campaign to recruit prospective college graduates for employment by participating in college career fairs, statewide employment conferences, etc. In addition, we are pursuing the development of partnerships with state universities and colleges to ensure long-term solutions to the recurring problem of recruiting and hiring qualified personnel. This objective continues to remain a high priority of the TOSHA Division.

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4. TOSHA needs to continue monitoring and improving its penalty assessment practices

In its previous evaluation report on TOSHA, the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA), recommended that TOSHA reevaluate its penalty calculation practices and take appropriate steps to ensure that its penalty levels become more comparable to the national average. In the February 1999 evaluation report, OSHA recommended that TOSHA

> supervisors should thoroughly review safety case files to assure that compliance officers assign proper values for frequency of exposure, proximity to the danger zone, working conditions, other factors and size during penalty assessment. Penalties must be designed to provide an incentive for the employer to correct violations voluntarily.

It appears that TOSHA is working to address concerns regarding penalty assessment, but further improvement still needs to be made.

As of December 1998, the TOSHA Safety section's average assessed penalty for serious violations over the past 24 months was 53% lower than OSHA's average penalty. (The OSHA average is based on OSHA's enforcement activities nationwide in states that, unlike Tennessee, do not have their own OSHA-approved occupational safety and health programs.) The TOSHA Health section's average assessed penalty for serious violations over the past 24 months was 12.5% lower than OSHA's average penalty. TOSHA Safety and Health's average assessed penalties for other than serious violations for the same period were 75% to 80% lower than OSHA's penalties. When TOSHA's Safety section was compared to OSHA during the past 12 months, the difference between the penalties for serious violations had decreased, but TOSHA still issued smaller penalties. The average penalty was 46% lower than OSHA's over the last 12 months, 39% lower over the last 6 months, and 36% lower over the past 3 months (according to unaudited Computerized State Plan Activity Measures dated December 1998). The TOSHA

Health section issued penalties that were very similar to the amounts OSHA issued for serious violations.

The TOSHA Field Operations Manual (FOM) specifies a distinction between serious violations and all other violations. There is no statutory requirement that a penalty be proposed when the violation is not serious; however, a penalty must be proposed when the violation is serious. The maximum penalty that may be proposed for a serious or nonserious violation is $7,000. In the case of willful or repeated violations, a civil penalty of up to $70,000 may be proposed. Section 50-3-402, *Tennessee Code Annotated*, specifies that penalties be assessed on the basis of four factors: the gravity of the violation; the size of the business; the good faith of the employer; and the employer's history of previous violations. The gravity of the violation is the primary factor in determining penalty amounts and is the basis for calculating the basic penalty for both serious and nonserious violations. To determine the gravity of a violation, the compliance officer must consider two factors: a) the severity of the injury or illness which could result from the alleged violation, and b) the probability that an injury or illness could occur as a result of the alleged violation. The gravity-based penalty may be adjusted downward as much as 90 percent, depending upon the employer's good faith, size of business, and history of previous violations. The penalty may be reduced up to 50 percent for size, 50 percent for good faith, and 10 percent for history. If a serious violation is classified as "repeated," a penalty reduction for good faith and history would not ordinarily be given, since the employer has exhibited a lack of good faith and reflected a poor history by repeating a previously cited, serious violation.

Our file review of 20 citations (assessed from December 12, 1990, through July 10, 1998) indicated that TOSHA had reduced the total dollar amount of the issued penalties by 66%. The cases included in the file review had a total original penalty of $255,840, and the total assessed penalty in the final citations was $87,275. Documentation in the files indicated that the penalties were reduced for the following reason(s): good faith (eight cases), size of business (two cases), financial condition of the business (one case), and past history (two cases). A second file review of six citation files with inspections conducted during October and November 1998 indicated that the original citation was reduced by 25% for three of the cases because the business abated the violation(s) promptly and exhibited a concern for a safer workplace.

TOSHA uses informal closing conferences with employers to attempt to resolve any differences of opinions, reach an informal settlement agreement, and prevent penalties from going unpaid for 180 days or more. An informal conference was conducted in 19 of the 20 cases reviewed. In nine cases the businesses have not made any payments, in four cases partial payments were made, and in four cases the penalty was paid. (See finding 2 for a discussion of delinquent penalties.) Three cases were contested and went to Chancery Court (one TOSHA Review Commission decision was reversed and two were affirmed). Five of the businesses that received citations during October and November 1998 had informal conferences, and three of the penalties were reduced by 25%. As of March 3, 1999, four of the penalties had been paid and two were being contested. The review of 1998 citations indicates that even though TOSHA is not reducing the penalties as much as before, businesses are paying the penalties in a more timely manner (payments ranged from 23 days to 53 days after the Notice of Intent was mailed or an informal conference was conducted).

Recommendation

TOSHA management should continue to address OSHA's concerns regarding penalty assessments. TOSHA supervisors should monitor penalty assessments to ensure that penalties appropriately reflect the severity of the violation and provide an incentive for the employer to correct violations promptly.

Management's Comment

We concur in part. The division has placed emphasis on penalty calculation methods and the supervisory review of the files. Proper penalty calculation procedures were reviewed at recent internal training seminars. The penalty assessed by the Safety Section has increased significantly and is currently 38% less than OSHA's nationwide average based on the June 1999 State Plan Activity Measures (SPAM). The Health Compliance Section's penalties are closer to the OSHA nationwide average. TOSHA's penalty calculation procedures outlined in the Field Operations Manual differ from those of OSHA in that they consider more factors, such as length of exposure, number of employees exposed, proximity to the hazard, etc. This method, in some cases, results in lower penalties, but is a more objective method than that used by OSHA.

TOSHA's initial penalties do fall below those of OSHA; however, TOSHA's penalty retention is approximately 45% higher than OSHA nationwide. The actual penalty paid by an employer for violations of the OSHA Act is much closer when both initial penalties and penalty retention are considered. Penalty reductions based on the size of a company, good faith, and history are in accordance with guidelines set forth in the Field Operations Manual.

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5. TOSHA's abatement periods exceed OSHA's recommended time periods

In its performance evaluation report for April 1996 through September 1998, the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA), criticized TOSHA for setting abatement periods that exceeded what would normally be needed to correct many of the hazards noted by the compliance staff. OSHA recommended that serious safety violations should be abated within a maximum of 30 days and serious health violations should be abated within a maximum of 60 days.

An OSHA activity measures report indicated that the number of serious health violations for which TOSHA assigned abatement periods greater than 60 days had increased during the evaluation period. The report also noted that TOSHA continued to set extended initial abatement periods for serious and other violations that could be more quickly abated. OSHA recommended that TOSHA should (1) review the procedures in place for assigning abatement periods in both its private and the public sector units; (2) set the abatement period for the shortest timeframe in which the employer can reasonably be expected to correct the violation; and (3) use discretion in granting Petitions for Modification of Abatement (PMAs).

A file review of six TOSHA inspections conducted during October and November 1998 (two health and four safety) indicated that the abatement periods exceeded OSHA's recommendations. The abatement period for one of the health inspections was set at 120 days from the date of the inspection; the other health inspection had abatement periods ranging from 113 to 129 days for the various violations. The actual time it took the employers to abate the violations was less than 30 days for one business and within 44 days for the other business. Except for one violation that was required to be corrected immediately, the safety violations were given abatement periods that ranged from 59 days to 85 days originally. There were three businesses that received extensions: 59 days to 85 days, 85 days to 121 days, and 75 days to 106 days. Documentation in three of the files indicated that the violations were abated during the inspection or prior to the scheduled informal conference. A review of public sector files indicated that the abatement periods were set from 35 to 113 days. Some entities were granted PMAs (Petitions for Modification of Abatement), which extended the actual time to correct the violation to as long as 269 days. TOSHA Public Sector granted at least one abatement extension for 16 of the 50 total violations (32%) that were identified during the audit file review.

The Director of TOSHA Compliance said that compliance officers set the abatement period as short as possible. The Notice of Intent to Issue Citations extends the abatement period time by at least 30 days. After the closing conference, the employer has 20 days to request an informal hearing with the compliance officer and supervisor, and TOSHA has 10 days to set up the informal conference. In some instances, the employer abated the violations prior to the informal conference and just discussed the amount of the penalty. However, there is the possibility that the employer may not correct the violation until after the informal conference. The director indicated that, legally, the employer does not have to abate the violation until the date that is indicated on the final citation issued by TOSHA.

TOSHA Public Sector's current policy is that 30 days is realistic for initial abatement dates. However, according to Public Sector management, as of December 1998, inspectors have been instructed to never accept any abatement dates for open live parts (e.g., electrical outlets, plugs, electrical boxes) or other serious hazards which can be corrected during the inspection or immediately be abated. The Chief of Public Sector also expressed concern that his section does not have enough authority to force an entity to abate violations. If a county/local government entity does not cooperate, the only recourse that the section has, under TOSHA Rule 0800-1-5-.18(b)(4), is to request that the Governor take away the entity's public sector status. This action, which would place the government entity in the schedule for private inspections, has no real impact, however, because government entities are not classified as hazardous enough to be placed on the general inspection schedule. If a state government entity fails to abate a violation, that entity's commissioner and/or the Governor can be notified.

Employees' risk of injury or fatality is increased when employers are not required to abate safety and health violations as soon as possible. In addition, by issuing extended abatement periods, TOSHA fails to reinforce the need to correct serious violations quickly.

Recommendation

TOSHA compliance officers should set abatement periods that reflect the severity of the violation and the amount of time needed to correct that violation. Violations that can be corrected during the inspection should be given immediate abatement periods instead of a blanket 30-day abatement period. Supervisors should review Petitions for Modification of Abatement and determine which extensions are justified rather than giving blanket extensions for all violations.

Management's Comment

We concur in part. The division agrees that the length of time (abatement period) given to the employer should be as short as possible. Compliance officers and area supervisors have been and will continue to be encouraged to keep abatement periods as short as possible. Because of an informal opinion by the Senior Counsel in the Attorney General's Office stating that once a citation is issued it becomes a final order and cannot be altered, the division adopted a "notice of intent" procedure. This, in effect, added 30 days to all abatement periods. Although this situation is not desirable to the division and we have placed the "elimination of draft citations" on the year 2000 legislation wish list, efforts will be made to keep abatement times as short as possible.

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6. Some divisions have not used their authority to assess penalties for violations of the law

Finding

The Workers' Compensation and Labor Standards Divisions have not used their authority to issue penalties for employer violations of workers' compensation and wage regulation laws.

Despite having the statutory authority to assess penalties of up to $100,000, the Workers' Compensation Division has not assessed penalties from employers who have never carried workers' compensation insurance or have let their coverage lapse. According to division staff, if they discover that a company is not currently carrying workers' compensation insurance, no penalty is assessed and the division gives the employer 30 days to establish coverage. In 1996, letters were sent to 717 employers regarding their lack of workers' compensation insurance coverage. In 1997, letters were sent to 369 employers; in 1998, 305 letters were sent.

Since 1996, when rules authorizing penalty assessments were approved, the Labor Standards Division has not assessed any penalties for wage regulation violations. Our review of a May 1999 department listing entitled "Wage Regulation Penalties" detailed 26 cases; no penalties were assessed, but 3 of the cases were sent to the department's legal section because of nonpayment of wages due employees, and 2 other cases were referred to the U.S. Department of Labor. Available criminal and civil penalties for wage regulation violations include the following:

For misrepresenting the amount of wages—a Class C misdemeanor or a civil penalty of $500 to $1,000. On the first offense, the employer shall receive a warning, in lieu of a penalty, if the department determines the violation was unintentional.

For not paying at least twice a month and with lawful currency—a Class B misdemeanor or a civil penalty of $500 to $1,000. On the first offense, the employer shall receive a warning, in lieu of a penalty, if the department determines the violation was unintentional.

For violating sex discrimination laws—a Class A misdemeanor.

The division director stated that penalties have not been assessed because in most cases the employer immediately corrects the problem. (Documentation provided by the department indicated that many of the employers who were cited for violations did pay the wages due to employees in a timely manner, although some did not.) In recent years, the department has received a growing number of wage regulation complaints—764 complaints in 1993 as compared to 1,260 in 1998.

Department managers have stated that the department's philosophy is to focus on achieving compliance with laws rather than punishing employers who do not comply. This seems to be a reasonable focus, and certainly, assessing penalties against unintentional or even first-time violators may be counterproductive. However, if employers know that no penalties will be assessed, there is little incentive to comply with the laws until they are caught, or to maintain compliance after the department's investigation is complete.

Recommendation

The department should use its statutory authority to assess penalties, particularly in cases of repeat violators or employers who clearly understood the requirements and chose to ignore them.

Management's Comment

We concur in part. The Division of Workers' Compensation's policy regarding non-compliant employers focused first on compliance and providing benefits to workers injured during the period of noncompliance. If the employer obtained workers' compensation insurance coverage immediately, we allowed the employer to use the monetary penalties which would have been payable to the state to pay benefits to the injured employees.

The division will use its statutory authority to assess penalties against those employers subject to, but noncompliant with, the provisions of the Workers' Compensation Law while continuing to pursue benefits for injured employees.

The Division of Labor Standards will make a concerted effort to more effectively utilize the penalty assessment authority granted by the statute.

7. The Board of Employee Assistance Professionals is not self-sufficient

Finding

The board was created in 1993 to license and regulate employee assistance professionals (EAPs), who provide services to the public through programs designed to assist in identifying and resolving job performance problems in the workplace. According to persons associated with the board at its inception, the Board of Employee Assistance Professionals was placed in the Department of Labor because it was workplace-related and because it was feared that the board would not receive sufficient attention if placed with other professional licensing boards (i.e., in the Department of Health's Division of Health-Related Boards or the Department of Commerce and Insurance's Division of Professional Regulatory Boards). During calendar year 1998, the board issued only 63 licenses and was not close to being self-sufficient. Sections 4-3-1011 and 4-29-121, *Tennessee Code Annotated*, require that professional licensing boards attached to the Departments of Health and Commerce and Insurance be self-sufficient. Although the Board of Employee Assistance Professionals is not attached to either of those departments, the board has the same duties and responsibilities as other licensing boards and it seems reasonable that this board should meet the same requirements.

To be licensed to practice in Tennessee as an EAP, one must have a high school diploma or GED and complete 3 years or 3,000 hours of a board-approved internship under a licensed EAP or document that one holds national certification as an EAP. The license application fee is $50, the initial license fee is $100, and the renewal fee is $100 per year. These licensing fees do not cover the cost of administering the board. The program's expenses include one person's salary and benefits totaling $27,377 a year, $50 per meeting and travel expenses for every board member attending, the division director's time for supervision, and Fiscal Services' time for processing funds. As of April 1999, only $360 had been collected in calendar year 1999. If all 63 EAPs renew their licenses, only an estimated $6,300 per year will be collected in fees.

In March 1998, it became mandatory for employee assistance professionals practicing in Tennessee to be licensed as an EAP unless they held licenses in certain other professions. The law allows many others—licensed psychologists, psychological examiners, clinical social workers, nurses, physicians, attorneys, clergy, community mental health center staff as defined by title 56, and any other qualified member of another professional group licensed under Titles 33, 63, or 68—to advertise and practice as EAPs. Because so many other types of professionals can practice as EAPs, it is not clear whether the number of licensed EAPs will greatly increase. In fact, the number of licensed EAPs has decreased since 1995.

Recommendation

The Board of Employee Assistance Professionals should work with the Department of Labor to identify ways to increase revenues (for example, by increasing fees or increasing the number of licensed EAPs) or decrease expenses, in order to become self-sufficient.

Management's Comments

Chairman of the Board of Employee Assistance Professionals

We concur in part that the EAP Board is relatively new in terms of operation and that fiscal self-sufficiency (revenues vs. expenses) has not been realized. Currently, there are 73 licensed employee assistance professionals (LEAPs) of record and in good/current standing. It is expected that these individuals will be renewing their licenses for the newly prescribed (as defined and determined by the board in 1998) term of two years, resulting in a $200 renewal fee per license, i.e., $14,600. The EAP Board is actively involved in efforts to achieve self-sufficiency.

In terms of moving toward becoming self-sufficient, the EAP Board anticipates an increase of new applicants/licensees during 1999, 2000, and 2001 because of the increasing number (150-200+) of Tennesseans who are holding (or will hold) national certification as an EAP professional (CEAP) and will meet criteria for State of Tennessee licensure. This premise is strengthened because of the March 1998 mandate that employee assistance professionals practicing in Tennessee have to be licensed under our board or hold licenses in certain other professions recognized by licensing boards, as many CEAPs are not licensed in other professions in Tennessee.

It is anticipated that an increase in EAP licenses will occur because of the following:

1. Many of the current and future CEAPs will not hold licenses in other professions and in order to be in compliance with the law they will have to seek LEAP status in order to practice as an employee assistance professional.

2. Also, many of these CEAPs who work full-time in the employee assistance profession and hold licenses in other professions will be continuing/advancing their professional credentials by their commitment to the LEAP credential as they work in Tennessee (the first state in the U.S. to have licensure for EAPs).

3. Application for licensure from out-of-state professionals (based out-of-state) who are providing contractual employee assistance services to Tennessee employers and their employee households. The EAP Board has just this year (1999) taken formal steps to communicate, educate, and facilitate in this matter. There are several out-of-state individuals/employee assistance service firms providing EAP services through contracts with Tennessee employers and/or Tennessee operations of out-of-state employers. Many of these out-of-state providers will easily meet LEAP criteria either

through their existing national certification (CEAP) or approved supervised internship by a current LEAP.

4. With added and continued information and education from the EAP Board, the applications for LEAP licensure from other licensed professionals embarking upon or established in the practice of employee assistance on a regular, increased, or full-time basis and interested in the LEAP credential for professional identity and status in the business marketplace/field of competition.

5. Continued and increased communication as to the law and licensure process, i.e., direct mailing, board inquiries, seminars, speaking, direct mail to Tennessee businesses and industries. We do not concur with the conclusion that the board is not close to becoming self-sufficient, because of the points made above. In sum, the next two years will allow this relatively new board to further publicize/educate about the substantive and legal reasons for the licensure credential/status. Applications from nationally certified employee assistance professionals who are licensed or are not licensed in other professions, applications from new persons in the employee assistance profession holding other professional licenses (e.g., psychology, social work, professional counselors, marriage and family therapists), new supervised internships, and licenses awarded to eligible out-of-state individuals providing an employee assistance service to Tennessee residents are all sources of increased licenses in 1999, 2000, and 2001.

The total number of EAP licenses awarded since the board's inception is 117, with some license holders leaving the state, leaving the EAP field, or dropping their EAP license when picking and choosing under personal/workplace budget constraints and limits. Many of those persons may choose to maintain their license in their clinical field because they have a traditional therapy/counseling practice versus an actual EAP practice . . . simply a matter of priority and what license represents their core work activities, i.e., therapy/counseling versus EAP consultation and coordination.

Also the EAP Board is supportive of prospective legislation (to originate from individual EAP professionals and Tennessee chapters of their professional association) that will amend the law to offer specific core criteria (seven core technologies) that will define and further clarify the practice of employee assistance. It is expected that this proposed wording will further clarify and define who is and is not practicing employee assistance services, thus the potential and probability of bringing in more professionals as LEAPs due to their meeting all or a majority of the seven core technologies of EAP practice. These core technologies are supported, espoused, and recognized nationally by employee assistance professionals and by the largest and most recognized national association of EAP professionals. This adds validity to the "core technologies" inclusion within the law's text and rules. This process should bring more LEAPs into the licensure process and designation.

We concur that the EAP Board should meet the same requirements as other regulatory boards. However, we do recognize and offer the inherent difficulties of being a fairly new board, stemming from a law passed in 1993 that has application and governance over a professional

group much smaller in size than that of some other professional groups, i.e., physicians, nurses, psychologists, insurance underwriters/brokers, lawyers, et al. Also these other groups have a law that is, for the most part, exclusive of any and all other groups and is singular and specific to only that profession . . . thus, a more mandated and "captive" group without any inclusion of other professional licenses, as is the case with the current EAP licensure law.

It should be noted that at the time of this response, the board has learned/is expecting that several individuals who have never applied for EAP licensure and individuals who let their license lapse over a year ago will be making application during 1999 or early 2000.

We concur with the finding recommendation and will work with the Department of Labor and Workforce Development with diligence and cooperation to attain self-sufficiency, through steps inclusive of the board's comments contained herein. We, the EAP Board, anticipate and expect our continued plans and activities will be reflected in future performance audit findings, i.e., mid–late 2001.

This somewhat lengthy response reflects and is symbolic of what we as a profession are doing nationally as we promote national certification, state licensures, and clarification of how our field and its core practice technologies are singular and distinct from clinical counseling/therapy disciplines. It's all a part of educating others and ensuring our separate identity . . . one that is understood and known by those we serve (businesses/industries as organizations and their employees/families).

Department of Labor

The department concurs with the response of the Chairman of the Board of Employee Assistance Professionals.

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8. The TOSHA Labor Advisory Council has not met in seven years

Finding

The TOSHA Labor Advisory Council was created by Section 50-3-919, *Tennessee Code Annotated*, to advise the Department of Labor on all matters in Tennessee pertaining to OSHA. A review of the council's minutes indicated that the council has not met since April 1992, when it adjourned because of the lack of a quorum. According to the Department of State's *Tennessee Open Appointments 1998 Annual Report*, the council had four vacant positions and only two sitting members who had been appointed by Governor Sundquist from nominees submitted by the Tennessee AFL-CIO. Those members' terms ended June 30, 1999.

Recommendation

The General Assembly may wish to consider terminating the TOSHA Labor Advisory Council because of its inactivity.

Management's Comment

We concur in part. The division believes there is value in resurrecting the TOSHA advisory board and has contacted the appropriate organizations to appoint members for the next term. The advisory board should be functional by January 1, 2000.

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9. Members of the department's boards, committees, commissions, and councils do not file conflict-of-interest disclosures

Finding

The Department of Labor does not require that members of its related boards, committees, commissions, or councils complete a conflict-of-interest disclosure form.

No statute requires written disclosure, and nothing came to the auditor's attention during this audit to indicate that board, committee, commission, or council members were influenced by personal or professional conflicts of interest. However, without a means of identifying potential conflicts of interest and discussing and resolving them before they have an impact on decisions, members could be subject to questions concerning impartiality and independence.

Conflict-of-interest disclosures are particularly important for entities such as the Board of Boiler Rules, the Elevator Safety Board, the Board of Employee Assistance Professionals, the Occupational Safety and Health Review Commission, and the Medical Care and Cost Containment Committee. These entities make decisions concerning licensing and/or disciplinary actions, and the potential for conflicts is increased because the statutes require that some of these entities' members be active in the particular industry/profession regulated.

Recommendation

The Department of Labor should develop a formal, written policy for determining whether a board, committee, commission, or council member has a conflict of interest and for documenting that determination. The department should adopt procedures for discussing and resolving potential conflicts. Board, committee, commission, or council members should complete disclosure statements at the beginning of their terms and should update disclosure statements regularly as part of the public record.

Management's Comments

We concur. The department recognizes that there exists the inherent possibility of potential conflicts of interest for members of state regulatory boards or commissions due to the statutorily required makeup of these bodies. Membership is based to some extent on the members working in the industry that they are called upon to regulate.

The department will develop a written policy and disclosure statement which will obligate each member of all boards and commissions attached to this department to notify the respective body of any and all potential conflicts of interest which might impair the member's ability to carry out the assigned duties in an unbiased fashion. The statement will be executed by the member upon his or her appointment and will be reviewed with all members on an annual basis.

Auditor's Note: The Chairmen of the Board of Boiler Rules, the Elevator Safety Board, the Board of Employee Assistance Professionals, and the Medical Care and Cost Containment Committee, as well as the Occupational Safety and Health Review Commission members, concurred with the department's response.

RECOMMENDATIONS

LEGISLATIVE

This performance audit identified the following areas in which the General Assembly may wish to consider statutory changes to improve the efficiency and effectiveness of the Department of Labor's operations.

1. The General Assembly may wish to consider deleting from statute the requirement that mine operators submit a mine map to the Tennessee Department of Labor.

2. The General Assembly may wish to consider terminating the TOSHA Labor Advisory Council because of its inactivity.

ADMINISTRATIVE

The following areas should be addressed to improve the efficiency and effectiveness of the operations of the Department of Labor and its related entities.

1. As recommended in the two previous (1985 and 1992) performance audits, the department should develop a list of all employers required to carry workers' compensation insurance and take action to ensure that those employers without such insurance comply with statutory requirements. Workers' Compensation management should work with Unemployment Insurance staff (and obtain Office for Information Resources input, if needed) to develop a process to compare information in the two divisions' databases in order to identify employers who are not in compliance with workers' compensation laws.

2. Department of Labor management should work to improve the communication between TOSHA and the Attorney General's office, to ensure that the Attorney General's office is notified of delinquent penalties and that those penalties are collected. The department's Legal Section and TOSHA management should develop procedures that specify who is responsible for preparing and transmitting reports on fines that are over 180 days past due. TOSHA management should monitor report submission to ensure the information is received by the Attorney General's office. TOSHA management should also work with the Attorney General's office to determine which cases merit legal action, which should be sent to collection agencies, and which accounts the department should request be written off as bad debt in accordance with Department of Finance and Administration policy.

3. TOSHA and the Department of Labor should make it a priority to fill positions as quickly as possible and to make the salaries more competitive with private business and the other

southeastern states so they are able to attract and retain trained officers. The department should follow the recommendations of the Department of Personnel and adjust the Occupational Safety Specialist and Industrial Hygienist salaries accordingly.

4. TOSHA management should continue to address OSHA's concerns regarding penalty assessments. TOSHA supervisors should monitor penalty assessments to ensure that penalties appropriately reflect the severity of the violation and provide an incentive for the employer to correct violations promptly.

5. TOSHA compliance officers should set abatement periods that reflect the severity of the violation and the amount of time needed to correct that violation. Violations that can be corrected during the inspection should be given immediate abatement periods instead of a blanket 30-day abatement period. Supervisors should review Petitions for Modification of Abatement and determine which extensions are justified rather than giving blanket extensions for all violations.

6. The department should use its statutory authority to assess penalties, particularly in cases of repeat violators or employers who clearly understood the requirements and chose to ignore them.

7. The Board of Employee Assistance Professionals should work with the Department of Labor to identify ways to increase revenues (for example, by increasing fees or increasing the number of licensed EAPs) or decrease expenses, in order to become self-sufficient.

8. The Department of Labor should develop a formal, written policy for determining whether a board, committee, commission, or council member has a conflict of interest and for documenting that determination. The department should adopt procedures for discussing and resolving potential conflicts. Board, committee, commission, or council members should complete disclosure statements at the beginning of their terms and should update disclosure statements regularly as part of the public record.